IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cri. Appeal No. 669 of 2000

Date of Decision: 25th October, 2007

State of H.P.		Appellant
	Versus	
Surinder Kumar		Respondent.

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant:	Mr.Ashok Chaudhary, Addl. Advocate General.
For the respondent:	Mr.A.K.Bansal, Advocate.

Sanjay Karol, J. (Oral)

The present appeal arises out of judgment dated 17th May, 2000 passed by Judicial Magistrate, Ist Class, Bilaspur, H.P. in Case No. 133/2 of 1997, titled as State vs. Surinder Kumar, acquitting the accused of the charged offence.

As per the case of the prosecution, complainant Roop Lal Sharma (PW-4) is the owner of a hotel (Dhabba) situated at Chharol, Bilaspur, H.P. On 31.7.1997 at about 10.45 a.m. he was sitting and having tea alongwith Roshan Lal, Nikru Ram, Shyam Lal and Shiv Ram, when one truck bearing No. HP-24-3564 being driven by the accused came at high speed and hit the "Veramda" (open shed) of the hotel, causing damage to his property. The complainant lodged complaint

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Whether the reporters of Local Papers are allowed to see the Judgment?

(Ext.PW-4/A) on the basis of which FIR dated 31.7.1997 under Sections 279, 336, IPC was registered with Police Station Barmana. The matter was investigated, site plan (Ext.PW-10/A) was prepared, the vehicle was got mechanically examined, report whereof is Ext.PW-6/A and Photographs of the site are Ext.PW-2/A to Ext. PW-2/H. The vehicle was impounded and released on superdari.

After completion of the investigation, challan was presented in the Court for trial. Notice of accusation was put to the accused under Sections 279 and 427, IPC, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined 10 witnesses and the statement of accused under Section 313, Cr.P.C. was also recorded. No defence evidence was led by the accused.

After examining the material on record, the Court below came to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt as one of the independent witnesses had turned hostile and the other two independent witnesses did not prove the guilt of the accused.

I have seen the record. In all, prosecution has examined 10 witnesses. LHC Jai Parkash (PW-1), HC Roop Lal (PW-5), Kesho Ram (PW-7), HC Chhota Ram (PW-9) and ASI Mast Ram (PW-10) are police officials, to whom matter was reported by PW-4 and who have carried out the investigation. Pawan Kumar (PW-2) is the photographer, who has taken the photographs at site. Lekh Raj (PW-6) is the person who has mechanically examined the vehicle. Through them, it has been proved that the vehicle in question had hit the open shed of the complainant's

hotel. The question, however, is as to whether the accused was driving the vehicle rashly and negligently so as to endanger human life.

This leaves us with three witnesses, namely, Roshan Lal (PW-3), Roop Lal (PW-4) and Shyam Lal (PW-8), who are spot witnesses and have seen the occurrence of the accident and their statements have to be examined for ascertaining the guilt of the accused. As per the version of PW-4, while he was sitting in his hotel and sipping tea alongwith Shiv Ram, Roshan Lal, Shyam Lal, a truck being driven by accused banged into his shed causing damage to his property. However, in his cross-examination he has admitted that just opposite to his hotel two vehicles were parked on the left hand side of the road in front of a hotel run by his neighbour. He has also admitted that parties had compromised the matter and he had received some compensation.

Shri Roshan Lal (PW-3) another spot witness was declared hostile and was cross-examined by the Public Prosecutor at length. His statement does not indicate the culpability of the accused for the charged offence. In fact he has corroborated the version of PW-4 that two vehicles were parked on the left side of the road just opposite the hotel of the complainant.

Shri Shyam Lal (PW-8) also a spot witness, in his examination has admitted that he was not aware about the cause of the accident. In fact in his cross-examination, he has admitted that the accident occurred due to the fault of the driver who was driving a gypsy coming from the opposite direction at great speed. This version in fact stands corroborated by PW-4 in his cross-examination. Perusal of site plan (Ext.PW-10/A) would also show that there is a blind curve and

therefore in order to save itself from a vehicle coming from the opposite direction, the accused turned towards extreme left resulting into the occurrence of the incident. In fact other than the complainant none of the witnesses have identified the accused to have driven the offending vehicle at the time of accident. The sole testimony of PW-4, in my view, is not sufficient enough to hold the accused guilty of the charged offence, particularly when a version proving the innocence of the accused has come on record though his statement duly corroborated by others that there was a vehicle coming from the opposite direction at a high speed and other vehicles had been parked on the left side of the road. Further it has also come through the statement of PW-10 that PW-4 has encroached upon the public land and has constructed a part of the open shed thereupon.

The accused has been acquitted by the Court below. The Court below has fully appreciated the material on record. I see no perversity in the same. I see no reason to interfere with the judgment rendered by the Court below. The appeal is accordingly dismissed. Bail bonds are discharged.

25th October, 2007 (Sanjay Karol),
(C) Judge